THE HON'BLE SRI JUSTICE C.V. RAMULU

Friday, the 23rd day of March,2007

W.P.No.18510 of 1994

Between:-

G. Narsimloo @ Manne Narsimloo … Petitioner

and

Andhra Pradesh Foods (A Government of India Enterprise), Nacharam I.D.A., Hyderabad, represented by its Managing Director … Respondent

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.18510 of 1994

ORDER:

This Writ Petition is filed seeking a Mandamus declaring the action of the respondent in issuing Proceedings No.APF/HRD/E/125/89-94, dated 3-10-1994 as arbitrary, illegal and unconstitutional and consequently to direct the respondent to consider that the petitioner is deemed to have been continued uninterruptedly in service with all consequential benefits.

It appears, under the impugned Proceedings dated 3-10-1994, the petitioner was dismissed from service, apart from cancelling the earlier Orders passed in his favour, viz., (i) the order No.APF/HRD/E/125/89, dated 29-4-1989 appointing the petitioner as Assistant Grade 'A", (ii) Proceedings No.APF/HRD/E/125/89, dated 26-10-1989 restoring the seniority, (iii) Proceedings No.APF/HRD/IPR/048/91, dated 19-6-1991 promoting the petitioner as Supervisor Grade I; and (iv) Proceedings dated 25-7-1992 confirming the services of the petitioner in the post of Supervisor Grade I.

It is the contention of the petitioner that he was initially appointed as Lower Division Clerk in the respondent-A.P.Foods and thereafter promoted as Senior Assistant. While working as Senior Assistant, he was placed under suspension and ultimately, after conducting a domestic enquiry, dismissed from service with effect from 10-4-1989 and immediately thereafter, the dismissal was reconsidered and he was appointed afresh as Assistant Grade 'A' with effect from 29-4-1989. The Order dated 29-4-1989 reads as under:

> "The newly formed A.P. Foods Employees Union has apologized on your behalf for your misdeeds for which you found guilty in an impartial domestic enquiry where every reasonable

opportunity was given to you to defend your case. Accordingly, on being found guilty of major misconduct as indicated in the termination order No.APF/HRD/740/89, dated 10-4-1989 your services were terminated with effect from 10-4-1989 and you received and acknowledged the said order on 24-4-1989.

The A.P. Foods Employees Union has suggested that in keeping with our tradition of humanism & enlightenment, we take a sympathetic view considering your present sufferings. Since your acts of mis-demeanour have been proved beyond reasonable doubt and you have been accordingly punished for the same, it is not possible to condone your acts of misdemeanou as the undersigned cannot review his orders to terminate your services. This can only be done by an appellate authority and that in your case is the Executive Committee of the Andhra Pradesh Nutrition Council.

However, taking into account the request of the newly created Union and the news of your present sufferings you are being offered a fresh appointment in the Assistant 'A' cadre in the scale of Rs.810-25-1060-30-1420 with your basic salary starting at Rs.810/- per month. This fresh appointment will not entitle you to any claims for regularization of services for the period you were not on the A.P. Foods rolls i.e., the period between the termination order taking effect and the date of your new re-joining A.P. Foods on fresh appointment. Neither will it give you any claim to a higher start etc., on the plea of previous service in this organization. You are hereby advised and cautioned not to repeat your mistakes. Under the circumstances, it has been thought appropriate that you will be kept on probation for a period of three years and if you fail to complete the probation period successfully, then your services are liable to be terminated any time even without assigning any reasons."

At this stage, it may be necessary to notice that there is no enabling provision for appointment of a dismissed/removed employee into the service of the respondent. It appears, after his fresh appointment by an Order dated 29-4-1989, the petitioner was given continuity of service with effect from 11-3-1987, the date on which he was initially appointed into the service of the respondent. Further, he was promoted to the cadre of Supervisor Grade-I with effect from 19-6-1991 and his services in the said cadre were regularized with effect from 25-7-1992. While that being so, on 11-7-1994, the petitioner was

issued with a show cause notice asking him to explain as to why his services should not be terminated forthwith in view of the Judgment of the Supreme Court reported in **MUNICIPAL BOARD V. MAHENDRA SINGH CHAWLA & OTHERS**[1] wherein it was held that re-employment of the employee dismissed on the basis of moral turpitude is void *ab initio* as was informed by the Principal Secretary, Women's Development, Child Welfare and Labour Department, Government of Andhra Pradesh, Hyderabad through the letter dated 28-5-1993. Petitioner submitted a detailed explanation for the said show cause notice on 4-8-1994. Thereafter, the impugned Proceedings has been issued dismissing the petitioner from service, apart from cancelling the earlier orders of promotion, seniority, arrears of salary etc. Aggrieved by the same, the present Writ Petition is filed.

A detailed counter affidavit has been filed by the respondents denying the allegations made by the petitioner. It is asserted that the service conditions of the employees of the respondent are governed by Section 5(3) of the Industrial Employment (Standing Orders) Act,1946 as certified by the Certifying Officer-cum-Joint Commissioner of Labour, vide Certificate No.DIL/34280/77, dated 28-1-1992. A.P. Foods employs several persons in various categories to implement the aims and objects of the A.P. Nutrition Council. There are about 373 employees working in A.P. Foods in various categories. They are all governed by the Standing Orders. It is true that the petitioner was appointed as an Attender in the Office of the A.P. Nutrition Council Repron Food Factory now called as A.P. Foods) with effect from 25-11-1973. Subsequently, he was promoted to the post of Senior Assistant in the Distribution Section. His duty was to put up note file and certify the correctness or otherwise of the bills submitted by the contractors, who had placed their vehicles for transportation of the food

to various destinations as per the agreement. After transportation of the food, the contractor has to submit his bills with the acknowledgment of the consignee in the inward Section of A.P. Foods. The petitioner as a Senior Assistant was supposed to put up a note file and certify the correctness or otherwise of the bills. On his clarification, the bills were forwarded to the Accounts Section for verification and sanction. The Cashier of the Accounts Section issues cheques to the contractor and puts the seal seeking payment by the Senior Assistant. Thus, the entire transaction of checking, verification, sanction and deductions depended upon the petitioner, who was working as a Senior Assistant and his position as Senior Assistant in the said section played an important role in the transaction of payment of the bills to the contractors. Petitioner while working as such, demanded illegal gratification to the tune of Rs.2,500/- stating that he would see that the contractor gets back all the amounts, which were deducted earlier i.e., for showing official favour of passing bills that would be submitted by the contractor, without any delay and without any deductions by putting up favourable notes to the Managing Director and also use his influence with him and other superior officers above the petitioner. When the said contractor declined to pay the amount, the petitioner demanded for payment of Rs.1,000/- immediately and the rest to be paid leisurely. When the contractor agreed for payment of Rs.1,000/- within four days, the petitioner wanted the amount to be paid on 7-3-1987 at Haridwar Hotel, Issamia Bazar at about 7.00 p.m. On accepting for payment of the said amount by the contractor, the petitioner had put up a note to the Manager (Disposals and Procurement) routing through the proper channel recommending payment of Rs.26,628/- withholding an amount of Rs.318/- towards security deposit and Rs.703/- for the goods

transported to Kalwakurthy and an amount of Rs.685/- being unloading charges. After receipt of the amount, the contractor met the Deputy Superintendent of Police, ACB, Hyderabad Range and gave a complaint stating the facts mentioned above for taking necessary action. After obtaining permission from the competent authority, the ACB had registered a case in Cr.No.10/ACB-HR/87 and arranged for a successful trap on 7-3-1987. Thereafter, the petitioner was departmentally proceeded with and was dismissed from service with effect from 10-4-1989. Immediately thereafter, the petitioner was appointed afresh through Proceedings dated 29-4-1989. Thereafter, he was given successive benefits as noticed above.

According to the respondent, the very appointment of the petitioner afresh with effect from 29-4-1989 after dismissal from service on 10-4-1989 is bereft of power. The Managing Director has no power either to review his own order and/or appoint the petitioner afresh. Therefore, the action taken by the respondent in terminating the services of the petitioner is in tune with the law declared by the Apex Court in the said Judgment. When this was pointed out to the Managing Director by the Principal Secretary to Government, action was initiated, show cause notice was issued and after seeking explanation from the petitioner, the services of the petitioner were terminated again. The same is neither arbitrary nor illegal and no interference can be made by this Court under Article 226 of the Constitution of India.

Sri M.R.K. Choudhary, the learned senior counsel appearing for the petitioner, strenuously contended that the Order passed on 10-4-1989 dismissing the petitioner from service was not in tune with the allegations proved against the petitioner. When proposal for dismissal of the petitioner was made, the Union met the respondent-Managing

Director and sought for lesser punishment. However, on an oral understanding, dismissal order was passed on 10-4-1989, promising that the petitioner would be appointed afresh immediately thereafter. That is how, the Orders dated 29-4-1989 reappointing the petitioner as Assistant 'A' cadre were emanated. The Assistant Grade 'A' is inferior post than the post held by the petitioner before his dismissal from service on 10-4-1989. As per the understanding, the petitioner was reverted and appointed afresh to the post of Assistant Grade 'A'. The very language imported into the Order of appointment dated 29-4-1989 is self-explanatory. It indicates that the petitioner was offered appointment afresh and he was permitted to rejoin duty. Of course, all other benefits like continuity of service, attendant benefits were all denied. Therefore, it cannot be said that the respondent has no power to review his own order or offer fresh appointment considering the mercy petition of the union as well as the petitioner. The Order was passed on 29-4-1989 and the present impugned Order was passed after 5 years thereof, which was neither necessitated nor warranted. Neither there is any prohibition nor any enabling provision for taking up such review for reappointment of a dismissed employee. In the absence of any power vested in the respondent, issuing impugned Proceedings is arbitrary and illegal and as such, the same is liable to be set aside.

Whereas, learned counsel for the respondent reiterated the same stand as was taken in the counter and further stated that the petitioner has absolutely no right whatsoever and the earlier Order passed on 29-4-1989 appointing the petitioner afresh does not stand the scrutiny of law. It cannot be said that it is continuation of the disciplinary proceedings and revising the same after the Union has made a representation on 29-4-1989. _The appointment of the

petitioner afresh on 29-4-1989 is a fresh dispensation and not in continuation and supersession of the earlier dismissal order dated 10-4-1989. Right to appoint a person afresh or entertaining a petition in that regard is contrary to law as laid down by the Apex Court in **MAHENDRA SINGH CHAWLA**'s case (supra) wherein it was categorically held that if an employee is involved in moral turpitude (misappropriation) he is not entitled for being reappointed into service. Though there is no such express power available to the respondent to review the Order passed on 29-4-1989, the power to appoint itself impliedly shows that there is a power to remove any person as contemplated under the General Clauses act. In the entire Regulations of the Corporation, there is no provision for reappointment and of course, there is also no prohibition for the same. Petitioner was appointed illegally; therefore, allowing the Writ Petition by setting aside the impugned Order would amount to reviving the illegal orders passed by the Managing Director earlier.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned Order and other material made available on record.

The provocation for passing the impugned Order dated 3-10-1994 terminating the services of the petitioner along with cancelling other four orders is the letter dated 28-5-1993 addressed by the Principal Secretary to Government, Women's Development, Child Welfare and Labour, Government of Andhra Pradesh, Hyderabad to the respondent, which reads as under:

> "Please refer your letter cited. It is regrettable to note that Sri G.Narsimhulu, a dismissed Senior Assistant in A.P. Foods, was not only reinstated into service in the name of a fresh appointment, but also subsequently paid all the back wages for the period of suspension, his seniority restored and annual increments released. The entire labour undertaken in conducting disciplinary enquiry has become futile and a corrupt public servant has been allowed to go

scot free. An employee, who has awarded punishment of dismissal after due enquiry cannot be given a fresh appointment. The officer had been dismissed from service after the Anti-Corruption Bureau had trapped him.

Your attention is also invited to the decision of Supreme Court in Municipal Board, Pratapgarh and another Vs. Mahindra Singh Chawla and others (1983(1) SLJ 440) which held that the fresh appointment of an employee, who was dismissed on the basis of violation of moral turpitude, is void ab initio. The apex Court further held that the question whether he would be a temporary or permanent employee pales into insignificance.

In view of the above, I am to request you to remove the above said employee from service after issuing a notice, keeping in view the above ruling of Supreme Court and send a compliance report to Government."

In fact, earlier, at one stage, the petitioner's services were dispensed with without issuing any notice to him. Therefore, the petitioner filed Writ Petition No.7579 of 1993 and in W.P.M.P.No.9488 of 1993 an interim order was passed suspending the dismissal order dated 4-6-1993. Aggrieved by the said interim order, an appeal in W.A.No.684 of 1993 was filed. Ultimately, both the Writ Petition and Writ Appeal were disposed of by a common Order on 5-7-1993 directing the respondent herein to issue a show cause notice to the petitioner and then proceed with the matter. Thereafter, a show cause notice dated 11-7-1994 was issued, which reads as under:

"Whereas Shri G. Narsimloo alias Manney Narasimloo (the then Senior Assistant) now working as Supervisor Grade I was dismissed from service on 10.4.89 after giving him the fullest opportunity as required under the Certified Standing Orders/Service Rules/Bye-Laws of Andhra Pradesh Goods, vide Proceedings of this Office No.APF/HRD/740/89, dated 10.4.89.

2. Whereas Shri G. Narasimloo alias Manney Narasimloo (the then Senior Assistant) now working as Supervisor Grade-I was given fresh appointment on 29.4.89 as Assistant-A vide proceedings of this Office No.APF/HRD/E/125/89, dated 29.4.89 and later his services were regularized with effect from 11.3.87 by this Office vide

Proceedings No.APF/HRD/E/125/89, dated 26.10.89 with retrospective effect giving him continuity of service with seniority and back wages.

3. Whereas Shri G. Narasimloo alias Manney Narasimloo (the then Senior Assistant) now working as Supervisor Grade-I was paid back wages and other emoluments vide Proceedings No.APF/HRD/E/125/89, dated 1.11.89.

4. Whereas Shri G. Narasimloo alias Manney Narasimloo (the then Senior Assistant) now working as Supervisor Grade-I was promoted to the post of Supervisor Grade-I on 19.6.91 vide Proceedings No.APF/HRD/IPR/048/91 dated 19.6.91 and his services were regularized in the post of Supervisor Grade-I vide Proceedings No.APF/HRD/PRO/054/91-92, dated 25.7.92.

5. And whereas the fresh appointment as given to Shri G.Narasimloo alias Manney Narasimloo vide the orders of this office dated 29.4.89 and the subsequent promotion given to him as Supervisor Grade-I vide the orders of this office dated 19.6.91 and his regualrization in the said promotion post vide the orders of this office dated 25.7.92 are illegal, since his fresh appointment as Assistant 'A' itself is illegal, as his dismissal from service on 10.4.89 after giving him the fullest opportunity as required under the Certified standing Orders/Service Rules/Bye-Laws of this office for major misconduct of taking bribe, which was proved in the departmental enquiry as held by the Supreme Court of India reported in 1983(1) SLJ 440 holding that the fresh appointment of an employee, who was dismissed on the basis of moral turpitude is void ab initio, as informed by the Principal Secretary to the Government of Andhra Pradesh, Women Development, Child Welfare and Labour (ICDS) Department vide his letter No.9/ICDS/DESK/A1/92-12, dated 28.5.93 (copy enclosed).

6. Shri G. Narasimloo is hereby directed to show cause as to why his service should not be terminated forthwith in view of the above judgment of the Supreme Court of India within 7 days from the date of receipt of this notice, failing which, it shall be deemed that he has no explanation to offer and further action will be taken without any reference to him."

In the above show cause notice, nothing has been stated except that the earlier order of fresh appointment dated 29-4-1989 was illegal in view of the Judgment of the Supreme Court in **MAHENDRA SINGH CHAWLA's** case (supra) wherein it was held that a person, who was

dismissed from service on the ground of proof of moral turpitude, cannot be given fresh appointment. The petitioner submitted a detailed explanation on 4-8-1994. However, the respondent, without taking into consideration the said explanation, passed the impugned Order. In the entire impugned Proceedings, there is no whisper as to what exactly the power with which the respondent is couched for taking such an action, except saying that earlier the petitioner was dismissed from service for moral turpitude and he cannot be reappointed afresh.

It is an undisputed fact that there was no prohibition of appointing the petitioner afresh after he was dismissed from service on 10-4-1989. The whole case of the respondent is that the authority, which has got power to appoint, has inherent power to remove him also. Since the respondent-appointing authority had invoked the inherent powers and removed the petitioner from service on the advise of the Principal Secretary, Women's Development, Child Welfare and Labour Department, Government of Andhra Pradesh, the conduct of the petitioner must be taken into consideration. He was earlier dismissed on 10-4-1989, since he was involved in an offence of moral turpitude. The criminal case, however, seems to be not proceeded with.

Respondent seems to have inspired by the letter dated 28-5-1993 addressed by the Principal Secretary, Women and Child Welfare, Government of Andhra Pradesh to him, wherein the law laid down by the apex Court in **MAHENDRA SINGH CHAWLA**'s case was stated. A principle of law cannot be applied in vacuum. That was a case where the services of an employee were terminated after conviction by a competent court of law in a case of bribery and such employee was appointed afresh. Therefore, the Supreme Court held

that such appointment is void *ab initio* and does not amount to reinstatement with continuity of service. The very appointment itself is void. In this case, admittedly, no prosecution was launched against the petitioner.

The petitioner has filed an affidavit dated 8-3-1995 to show that under similar circumstances, one D. Venkat Reddy, who was initially appointed as Junior Assistant on 11-10-1982 in the respondent-organization and whose services were terminated with effect from 6-11-1995 on the ground that his appointment was contrary to the Rules and without following any procedure, was reappointed as a Junior Assistant, on humanitarian grounds and thereafter, he was further promoted also. Likewise, one Ch.Vijaya Kumar, Stenographer, who was dismissed from service on 23-5-1988 was again taken into service on 4-11-1989 as a fresh candidate basing on the representation made by the Union to the Managing Director of A.P.Foods. Thereafter, the punishment, which was imposed, was revoked and the period for which he was kept under suspension was also regulated. In all those cases, no further action was taken by the respondent. This itself would show that the respondent-Managing Director has been reconsidering the dismissal order on the basis of either recommendation of the Union or on the basis of apologies tendered by them.

In fact, in this case, the real question that arises for consideration is whether the order passed on 29-4-1989 appointing the petitioner afresh was in continuation of the disciplinary proceedings, which culminated in the dismissal order dated 10-4-1989, since the mercy petition was filed before the Managing Director or the order was passed without any authority as is contended by the learned counsel for the respondent.

The order dated 29-4-1989, as noticed above, would indicate that the newly formed A.P.Foods Employees Union has apologized on behalf of the petitioner for his misdeeds for which he was found guilty and suggested that in keeping with the tradition of humanism and enlightenment, to take a sympathetic view considering the present sufferings of the petitioner. Taking into account the request of the newly formed Union and in view of the sufferings of the petitioner, he was offered fresh appointment as Assistant Grade 'A' with basic salary of Rs.810/- per month and it was further made clear that this fresh appointment will not entitle him any claims for regularization of services for the period he was not on the rolls of A.P. Foods i.e., the period between the termination order taking effect and the date of reappointment in A.P. Foods (i.e. 19 days) – neither the fresh appointment will give any claim to higher start on the plea of previous service in the organization and he was further advised to be cautious and not to repeat his mistakes. The Managing Director further observed, under the circumstances it has been thought appropriate that the petitioner will be kept on probation for a period of 3 years and if he fails to complete the probation period successfully, then his services are liable to be terminated any time even without assigning any reasons. This language imported into the Order dated 29-4-1989 does not indicate that it is an appointment considered when a new vacancy has arisen in pursuance of a notification issued by the organization or the petitioner being sponsored by the Employment Exchange. On the other hand, it clearly indicates that the mercy petition of the petitioner and the representation of the Union were taken into consideration and the Order dated 10-4-1989 was reviewed and a fresh appointment was given to the petitioner on 29-4-1989. In fact, what exactly is denied after fresh appointment is that he is not

entitled for regularization of his services for the period he was not on the rolls of the A.P. Foods i.e. the period between the termination taking effect and the date of his rejoining. The rest of the service rendered by the petitioner earlier was not denied. That seems to be the reason, when the petitioner filed a representation for regularization of his services, seniority etc., the same was considered under the other four Orders, regularizing his services, sanctioning increments, arrears of pay etc., which is also sought to be cancelled under the impugned Proceedings. Firstly, the order dated 29-4-1989 was not a fresh appointment order after the dismissal of the petitioner as per the Regulations of the A.P. Foods. In fact, there is no provision for appointment of a person, who has been dismissed/removed from service nor there is any prohibition under the said Rules. It is only a continuation of the dismissal order dated 10-4-1989, which was reviewed and altered by invoking the inherent powers by the appointing authority-respondent herein. If this power is not available, equally, the respondent has no power to pass the present impugned Proceedings dated 3-10-1994 dismissing the petitioner from service while canceling the other four Orders of service benefits extended to the petitioner. Further, the two persons, who were removed/dismissed from service, were taken back into service by the appointing authority. May be, that was a case of simple termination i.e., termination after conducting an enquiry into some charges and may not be a case of misappropriation/moral turpitude. But, here, the question is as to whether the appointing authority has any inherent power of reviewing his orders or not. Once the respondent takes a stand that the Managing Director has no power to review his own order and the order passed on 29-4-1989 cannot stand the scrutiny of law, the very same argument stands in the way of the respondent to support the Order

passed on 3-10-1994 dismissing the petitioner from service.

For all he above reasons, the impugned Order is liable to be set aside and is accordingly set aside. The respondent is directed to reinstate the petitioner with all consequential benefits. Further, if the respondent is intending to cancel/withdraw the earlier four orders, which were cancelled through the impugned Proceedings, they are at liberty to take appropriate action as available under the law, after putting the petitioner on notice and calling for his explanation etc.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

23-3-2007

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[1] 1983(1) SLJ 440